

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1165 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-6-2-12 IS ADDED TO THE INDIANA CODE
- 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2005]: **Sec. 12. (a) The following definitions apply**
- 6 **throughout this section:**
- 7 **(1) "PERF" refers to the public employees' retirement fund**
- 8 **established under IC 5-10.3-2-1.**
- 9 **(2) "Securities" has the meaning set forth in IC 23-2-1-1.**
- 10 **(3) "Securities fraud" means a violation of:**
- 11 **(A) IC 23-2-1;**
- 12 **(B) the federal Securities Act of 1933 (15 U.S.C. 77a);**
- 13 **(C) the federal Securities Exchange Act of 1934 (15 U.S.C.**
- 14 **78a);**
- 15 **(D) the federal Public Utility Holding Company Act of 1935**
- 16 **(15 U.S.C. 79a);**
- 17 **(E) the federal Trust Indentures Act of 1939 (15 U.S.C.**
- 18 **77aaa);**
- 19 **(F) the federal Investment Advisers Act of 1940 (15 U.S.C.**
- 20 **80b-1);**
- 21 **(G) the federal Investment Company Act of 1940 (15**
- 22 **U.S.C. 80a-1);**
- 23 **(H) the federal Securities Investor Protection Act of 1970**
- 24 **(15 U.S.C. 77aaa); or**

(I) the statutes, rules, or regulations of another state that are substantially similar to clauses (A) through (H).

(4) "TRF" refers to the Indiana state teachers' retirement fund established under IC 21-6.1-2-1.

(b) The attorney general shall investigate the commission or possible commission of securities fraud if there is a reasonable likelihood that the securities fraud affected securities owned by PERF or TRF. The attorney general may request the assistance of the securities commissioner in conducting an investigation under this subsection.

(c) Not later than thirty (30) days after the attorney general has completed an investigation under this section, the attorney general shall report the results of the investigation to the legislative council. The attorney general's report to the legislative council must be in an electronic format under IC 5-14-6.

(d) If:

(1) a civil or administrative action has been filed that relates to a securities fraud described in subsection (b); and

(2) intervention is permissible under an applicable statute, court rule, administrative rule or regulation, or other authority;

the attorney general shall intervene on behalf of PERF or TRF in the civil or administrative action."

Page 10, after line 3, begin a new paragraph and insert:

"SECTION 7. IC 23-2-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and

(2) shall fix their compensation with the approval of the budget agency.

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing stating the reasons for dismissal. Within fifteen (15) days after dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing

1 party was dismissed for a political, social, religious, or racial reason,
2 the appealing party shall be reinstated to the appealing party's position
3 without loss of pay. In all other cases, if the decision is favorable to the
4 appealing party, the secretary of state shall follow the findings and
5 recommendations of the board, which may include reinstatement and
6 payment of salary or wages lost. The hearing and any subsequent
7 proceedings or appeals shall be governed by the provisions of IC 4-15-2
8 and IC 4-21.5.

9 (c) Fees and funds of whatever character accruing from the
10 administration of this chapter shall be accounted for by the secretary of
11 state and shall be deposited with the treasurer of state to be deposited
12 by the treasurer of state in the general fund of the state. Expenses
13 incurred in the administration of this chapter shall be paid from the
14 general fund upon appropriation being made for the expenses in the
15 manner provided by law for the making of those appropriations.
16 However, costs of investigations recovered under sections 16(d) and
17 17.1(c) of this chapter shall be deposited with the treasurer of state to
18 be deposited by the treasurer of state in a separate account to be known
19 as the securities division enforcement account. The funds in the account
20 shall be available, with the approval of the budget agency, to augment
21 and supplement the funds appropriated for the administration of this
22 chapter. The funds in the account do not revert to the general fund at
23 the end of any fiscal year.

24 (d) In connection with the administration and enforcement of the
25 provisions of this chapter, the attorney general shall render all
26 necessary assistance to the securities commissioner upon the
27 commissioner's request, and to that end, the attorney general shall
28 employ legal and other professional services as are necessary to
29 adequately and fully perform the service under the direction of the
30 securities commissioner as the demands of the securities division shall
31 require. Expenses incurred by the attorney general for the purposes
32 stated in this subsection shall be chargeable against and paid out of
33 funds appropriated to the attorney general for the administration of the
34 attorney general's office.

35 (e) Neither the secretary of state, the securities commissioner, nor an
36 employee of the securities division shall be liable in their individual
37 capacity, except to the state, for an act done or omitted in connection
38 with the performance of their respective duties under this chapter.

39 (f) The commissioner, subject to the approval of the secretary of
40 state, may adopt rules, orders, and forms necessary to carry out this
41 chapter, including rules and forms concerning registration statements,
42 applications, reports, and the definitions of any terms if the definitions
43 are consistent with this chapter. The commissioner may by rule or order
44 allow for exemptions from registration requirements under sections 3
45 and 8 of this chapter if the exemptions are consistent with the public
46 interest and this chapter.

47 (g) The provisions of this chapter delegating and granting power to

the secretary of state, the securities division, and the securities commissioner shall be liberally construed to the end that:

(1) the practice or commission of fraud may be prohibited and prevented;

(2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and

(3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based on the securities division's investigations is meritorious:

(1) the commissioner or a designee empowered by the commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;

(2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;

(3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and

(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and

(B) prosecute the alleged offense.

(i) The securities commissioner shall take, prescribe, and file the oath of office prescribed by law. The securities commissioner, senior investigator, and each deputy are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this chapter, or in serving any process, notice, or order connected with the enforcement of this chapter by whatever officer or authority or court issued. The securities commissioner, the deputy commissioners for enforcement, and the investigators comprise the

enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(j) Upon request of the attorney general, the securities commissioner shall assist the attorney general in a securities fraud investigation under IC 4-6-2-12 concerning securities owned by the public employees' retirement fund (IC 5-10.3-2-1) or the Indiana state teachers' retirement fund (IC 21-6.1-2-1). Expenses incurred by the security commissioner in assisting the attorney general in an investigation under IC 4-6-2-12 shall be paid by the secretary of state from funds appropriated for the administration of this chapter.

~~(j)~~ **(k)** The securities commissioner and each employee of the securities division shall be reimbursed for necessary hotel and travel expenses when required to travel on official duty. Hotel and travel reimbursements shall be paid in accordance with the travel regulations prescribed by the budget agency.

~~(k)~~ **(l)** It is unlawful for the secretary of state, the securities commissioner, or the securities division's employees to use for personal benefit information that is filed with or obtained by the securities division and that is not made public. No provision of this chapter authorizes the secretary of state, the securities commissioner, or the employees of the securities division to disclose information except among themselves, or when necessary or appropriate, in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the securities commissioner, or the securities division or its employees.

~~(l)~~ **(m)** The commissioner may honor requests from interested persons for interpretative opinions and from interested persons for determinations that the commissioner will not institute enforcement proceedings against specified persons for specified activities. A determination not to institute enforcement proceedings must be consistent with this chapter. A person may not request an interpretive opinion concerning an activity that:

- (1) occurred before; or
- (2) is occurring on;

the date that the opinion is requested. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretative opinion or determination."

Renumber all SECTIONS consecutively.

(Reference is to HB 1165 as printed January 28, 2005.)

Representative Crooks